

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CHRISTOPHER FEWELL,

Plaintiff,

v.

MARTIN O'MALLEY,¹ *Commissioner
of the Social Security Administration,*

Defendant.

No. 1:23-CV-0865

(Chief Judge Brann)

(Magistrate Judge Schwab)

ORDER

SEPTEMBER 12, 2024

Plaintiff filed the instant action on May 24, 2023, and it was jointly assigned to the undersigned and to a magistrate judge. Upon designation, a magistrate judge may “conduct hearings, including evidentiary hearings, and . . . submit to a judge of the court proposed findings of fact and recommendations.”² Once filed, this report and recommendation is disseminated to the parties in the case who then have the opportunity to file written objections.³

On August 19, 2024 Magistrate Judge Susan E. Schwab, to whom this matter is jointly assigned, issued a thorough report and recommendation

¹ Martin O'Malley is now the Commissioner of Social Security, and he is automatically substituted as the defendant in this action. See Fed. R. Civ. P. 25(d) (providing that when a public officer sued in his or her official capacity ceases to hold office while the action is pending, “[t]he officer’s successor is automatically substituted as a party”); 42 U.S.C. § 405(g) (“Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.”)

² 28 U.S.C. 636(b)(1)(B).

³ 28 U.S.C. 636(b)(1).

recommending that the Court vacate the decision of the Commissioner of Social Security and remand the case to the Commissioner for further proceedings.

No objections to the report and recommendation have been filed. Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error.⁴ Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the findings or recommendations made by the magistrate judge.⁵

Because the Court writes solely for the parties, it will not restate the facts, but will instead adopt the recitation of facts as set forth by the magistrate judge. The Court has conducted a de novo review here and found no error.

AND NOW, IT IS HEREBY ORDERED that:

1. Magistrate Judge Schwab's Report and Recommendation (Doc. 24) is **ADOPTED** in full;
2. The Commissioner's decision is **VACATED**, and this matter is **REMANDED** for further proceedings consistent with this Order and Magistrate Judge Schwab's Report and Recommendation;

⁴ Fed. R. Civ. P. 72(b), advisory committee notes; *see Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that court should in some manner review recommendations regardless of whether objections were filed).

⁵ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

3. Final Judgment is entered in favor of Plaintiff and against Defendant pursuant to Fed. R. Civ. P. 58 and sentence four of 42 U.S.C. § 405(g);
4. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

Chief United States District Judge